

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

December 18, 2008

DOCKET	
08-AFC-11	
DATE	DEC 16 2008
RECD.	DEC 16 2008

Marc Campopiano
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626

**RE: Cultural Resources Reports: Application for Confidentiality,
Competitive Power Ventures Vacaville
Docket No. 08-AFC-11**

Dear Mr. Campopiano:

On November 18, 2008, Competitive Power Ventures (CPV) filed an application for confidentiality to the above-captioned docket, on behalf of the proposed CPV Combined Cycle Power Plant in Vacaville. CPV seeks confidentiality for documents containing sensitive cultural resource information, which contain the location and content of archaeological sites. Specifically, CPV requests confidential designation for the following documents (hereinafter referred to as the "Reports"):

- Appendix 5.3B CPV Vaca Station Cultural Resource Assessment
- Appendix 5.3C California Historical Resources Information System Literature Search Results

CPV's application for confidentiality states, in part:

The . . . [Reports] should be kept confidential indefinitely to protect potential cultural resources sites and other applicable cultural resources described in the . . . [Reports]. If the descriptions of the locations of the sites or cultural resources are released to the public domain, there is a risk of looting or other degradation to the applicable cultural resources. . . . The public interest will be served by nondisclosure by preventing looting of the cultural resource sites or other degradation to the applicable cultural resources described in the . . . [Reports]. Such looting or other degradation to the applicable cultural resources would preclude scientific study of the sites to obtain data about the cultural resource areas.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential."

The California Public Records Act recognizes the confidentiality principles of federal law. (Gov. Code, § 6254(k).) The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural

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resource site locations must be kept confidential in order to preserve them. (16 U.S.C. § 470hh.) Non-disclosure of the archaeological and cultural resources, such as the information that you have submitted, is expressly in the public interest, to be kept confidential pursuant to the Archaeological Resources Protection Act. Therefore, CPV's application will be granted confidentiality in its entirety, and the Reports will be kept confidential for an indefinite period.

Please note that any subsequent submittals related to this application can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if Beacon files a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.

Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Deborah R. Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



MELISSA JONES
Executive Director

cc: Docket Unit
Rod Jones, Energy Commission Project Manager